

Greg A. Hibbard, OSB No. 183602
ghibbard@nwresourceclaw.com
NORTHWEST RESOURCE LAW PLLC
71 Columbia Street, Suite 325
Seattle, WA 98104
206.971.1568

David O. Bechtold, OSB No. 133019
dbechtold@nwresourceclaw.com
NORTHWEST RESOURCE LAW PLLC
1500 SW First Avenue, Suite 985
Portland, OR 97201
503.664.3582

*Attorneys for Proposed Amicus Curiae
James Johnston, Ph.D.*

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

GREATER HELLS CANYON COUNCIL, CV No. 2:22-CV-00859-HL
et al.,

Plaintiffs,

v.

JAMES JOHNSTON, Ph.D.'S *AMICUS
CURIAE* BRIEF

HOMER WILKES, et al.,

Defendants,

and

AMERICAN FOREST RESOURCE
COUNCIL and EASTERN OREGON
COUNTIES ASSOCIATION,

Defendant-Intervenors.

I. INTRODUCTION

Professor James Johnston, Ph.D. submits this brief and his supporting declaration as *amicus curiae* in support of Federal Defendants and Defendant-Intervenors in response to Plaintiffs’ Motion for Summary Judgment. Professor Johnston reviewed Plaintiffs’ motion and was concerned that Plaintiffs were using a straw man argument to distort the views of the scientific community regarding the Screens Amendment. As an exhibit to his declaration, Professor Johnston submits a letter to the Court, signed in agreement by fourteen other prominent forest scientists, that explains the lack of controversy among scientists regarding the Screens Amendment.

II. ANALYSIS

In Plaintiffs’ Memorandum in Support of their Motion for Summary Judgment, ECF. No. 41, Plaintiffs argue that the Forest Service violated the National Environmental Policy Act by failing to prepare an environmental impact statement. ECF No. 41 at 24.¹ In support of that argument, Plaintiffs assert that the Screens Amendment—the decision to replace a rule that prohibited harvest of trees that were greater than 21 inches in diameter at breast height with a rule that focuses on protection of large and old trees—is “highly controversial.” *Id.* at 25. Plaintiffs allege that “[s]ubstantial scientific controversy exists over the purpose and need for the Screens Amendment.” *Id.* at 27. Plaintiffs also allege that there is “significant controversy” over the environmental effects of the Screens Amendment, claiming that the effects are “highly

¹ In this brief, paginated citations refer to the Memorandum in Support of Plaintiffs’ Motion for Summary Judgment in ECF No. 41.

uncertain.” *Id.* at 30-33. Thus, according to Plaintiffs, those controversial aspects of the Screens Amendment mandate the preparation of an environmental impact statement. *Id.* at 25.

Professor Johnston respectfully disagrees with Plaintiffs’ assessment. Professor Johnston’s letter identifies that “no meaningful controversy among scientists exists.” Declaration of James Johnston, Ph.D., Ex. A at 3. Professor Johnston’s letter explains that Plaintiffs rely on a non-peer-reviewed report that mischaracterizes the historical conditions of the forests at issue. *Id.* at 4-7. The letter also explains that the Forest Service relied on adequate modeling and that the effects of the Screens Amendment are not highly uncertain or controversial. *Id.* at 7-9.

III. CONCLUSION

Professor Johnston respectfully submits that the Screens Amendment is not highly controversial in the scientific community.

DATED this 10th day of February, 2023.

NORTHWEST RESOURCE LAW PLLC

s/ Greg A. Hibbard

Greg A. Hibbard, OSB No. 183602

ghibbard@nwresource.com

Phone: 206.971.1568

David O. Bechtold, OSB No. 133019

dbechtold@nwresource.com

Phone: 503.664.3582

*Attorneys for Proposed Amicus Curiae James
Johnston, Ph.D.*

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Oregon, Pendleton Division using the CM/ECF system on February 10, 2023. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED this 10th day of February, 2023.

s/ Greg A. Hibbard

Greg A. Hibbard, OSB No. 183602

David O. Bechtold, OSB No. 133019

Attorneys for Proposed Amicus Curiae James Johnston, Ph.D.